

Court of Appeals, State of Michigan

ORDER

A C Dennis v Waterland Trucking Service Inc

Docket No. 278942

LC No. 2005-000216

Deborah A. Servitto
Presiding Judge

Henry William Saad

Pat M. Donofrio
Judges

The Court orders, pursuant to MCR 7.205(D)(2), the May 29, 2007 order of the Workers' Compensation Appellate Commission ("WCAC") is VACATED to the extent it directs Zurich-American Insurance Company of Illinois ("Zurich") to "reimburse Waterland-Reliance-MPCGA for the benefits paid to, or on behalf of, plaintiff by Waterland-Reliance-MPCGA on and after October 22, 2000." Zurich argues that MPCGA is not entitled to reimbursement from Zurich because the petition to recoup filed by MPCGA sought to recoup an overpayment of benefits to plaintiff, not reimbursement from Zurich, and that such a claim for reimbursement by MPCGA has been waived under *Stein v Braun Engineering*, 245 Mich App 149; 626 NW2d 907 (2001). In other words, Zurich contends that the recoupment sought by MPCGA and the reimbursement ordered by the WCAC are two different things, and that MPCGA waived its right to the latter. Since Zurich's contention in this regard was not addressed by the WCAC, this Court lacks the authority to address it, and a remand for consideration of the issue is warranted. See e.g., *Chase v Terra Nova Industries*, 272 Mich App 695, 703-704; 728 NW2d 895 (2006). If the WCAC determines that reimbursement is proper, then the WCAC must also determine whether reimbursement should be to MPCGA, Reliance, or both.

In all other respects, the application for leave to appeal is DENIED for lack of merit in the grounds presented.

This case is REMANDED to the WCAC for further proceedings consistent with this order. We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 31 2008

Date

Sandra Schultz Mengel
Chief Clerk